

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

ROBERT SHAW,)
)
 Plaintiff,)) No. 1:10-cv-651-SEB-DML
 v.)
)
 STATE OF INDIANA. et al.,)
)
 Defendants.)

Entry and Notice

Given the procedural posture of the action, the plaintiff's motion to dismiss (dkt 36) is effective as a notice of dismissal pursuant to Rule 41(a)(1)(A)(i) of the *Federal Rules of Civil Procedure*. Mislabeling a notice as a "motion" does not change its character or its effect. *United States v. One 1997 E35 Ford Van, VIN: ??1FBJS31VHB70844*, 2010 WL 1172481, *3 (N.D.Ill. 2010)(citing cases).

The effect of a Rule 41(a)(1) dismissal is clear: A Rule 41(a) "dismissal terminates the case all by itself." *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1078 (7th Cir. 1987). The effect of a Rule 41(a)(1) dismissal without prejudice is "to render the proceedings a nullity and leave the parties as if the action had never been brought." *Williams v. Clarke*, 82 F.3d 270, 273 (8th Cir. 1996). Tendering an order with either a notice of dismissal or a stipulation of dismissal pursuant to Rule 41(a) is superfluous. See *Jenkins v. Village of Maywood*, 506 F.3d 622, 624 (7th Cir. 2007) ("Rule 41(a)(1) specifies that a plaintiff may dismiss an action without an order of court").

The action is **closed**. An order purporting to grant the plaintiff's motion would be superfluous.

IT IS SO ORDERED.

Date: 06/29/2010

Sarah Evans Barker
SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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